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August 2, 1999

OFFICE OF THE
EXECUTIVE SECRETARY

BY HAND

Mr. K. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

RE: Application of NA Communications, Inc. for a Certificate of Convenience and
Necessity; Docket No. 98-00597

Dear Mr. Waddell:

On behalf of NA Communications, Inc. ("NACI" or "Applicant"), by its undersigned counsel, this filing is made in response to the letter to you from Henry Walker dated Friday, July 30, 1999. (While the letter bears the date "June 30, 1999" and references "Docket No. 99-00597," we assume that the letter actually was dated on Friday, July 30, 1999 and refers to Docket No. 98-00597.)

Despite the fact that Mr. Walker's client, P.V. Tel of Tennessee, LLC ("P.V. Tel") was only granted a limited right to cross examine witnesses at NACI's hearing, Mr. Walker filed on Friday, July 30, 1999 (less than two business days before the postponed August 3, 1999, 9:00 am hearing date) what amounts to an attempted extensive discovery request. Mr. Walker attached to his letter a four-page "checklist" of items, all of which have already been covered by Staff during the application and data request process during the course of the past eleven months since NACI filed its application. NACI submits that Mr. Walker's attempt to initiate his own discovery process two days before NACI's postponed hearing is improper, highly suspect, and is in violation of the terms of the limited intervention that the Authority granted to his client, P.V. Tel. In light of the additional time and expense that Mr. Walker's improper discovery request has caused, the suspect motivation behind the filing, and given that Mr. Walker has violated the terms of the limited grant of intervention, NACI submits that the Authority should reconsider allowing P.V. Tel to participate in any further proceedings in this matter, in the interests of justice and to ensure the orderly and prompt conduct of the proceedings.

By way of background, Henry Walker filed an untimely motion to intervene on behalf of his client, P.V. Tel, only two days prior to the scheduled July 28, 1999 hearing on NACI's application. On July 27, 1999, the Authority granted P.V. Tel's motion to intervene on a limited

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basis, for the sole purpose of cross-examining witnesses at the hearing on NACI's application. The Authority conditioned the grant of intervention in this manner pursuant to T.C.A. § 4-5-310(c), which allows the Authority to impose such conditions limiting intervention "so as to promote the orderly and prompt conduct of the proceedings."

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Although the grant of intervention accorded to Mr. Walker's client was specifically limited to cross-examination at the hearing, Mr. Walker has proceeded to make a discovery request filing to which NACI now must respond, at additional time and expense to the Applicant.

Subsequent to Mr. Walker's filing of the discovery request on Friday, July 30, 1999, NACI's Tennessee counsel Billye Sanders initiated a telephone conversation with Mr. Walker and Mr. Joe Werner of Staff in order to discuss Mr. Walker's discovery request. During this discussion, Staff indicated that it already had received from NACI everything it needed to proceed to the hearing on Tuesday, August 3, 1999.

During the discussion with Billye and Joe, Mr. Walker asked whether NACI had filed its *pro forma* financial statements, and whether these financial statements would be affected as a result of the impending acquisition by CFW Corporation ("CFW") of all of the remaining stock of NACI's parent company, NetAccess, Inc. ("NetAccess"). As indicated in NACI's May 12, 1999 response to Staff's data requests, NACI filed under seal updated financial statements and *pro forma* financial statements as attachments to the responses. NACI's May 12, 1999 data request responses also indicated that NACI's parent, NetAccess raised \$925,000 during a private placement offering in the first quarter of 1999, \$600,000 of which placement was purchased by CFW. The impending acquisition by CFW of all of the remaining NetAccess stock involves a payment to the remaining individual shareholders, and will not affect the current financial statements of NACI or NetAccess, which NACI already submitted during the course of the application and data request process. However, in addition to the strength of NACI and NetAccess' own financial resources, and as discussed in NACI's July 27, 1999 response to the Authority's request for additional information regarding CFW, CFW itself has substantial financial resources, including total assets of over \$155 million and net income of approximately \$8.5 million, and has been providing local exchange service in Virginia for over 102 years.

NACI also would like to clarify and correct statements made in Mr. Walker's July 30, 1999 letter. First, we would like to correct Mr. Walker's statement (in the third paragraph of his discovery request) that NACI filed "a biographical description of the new chairman of the board of NetAccess." We assume that Mr. Walker is referring to biographical information provided for the Chairman and CEO of CFW, J.S. Quarforth. As stated in NACI's July 27, 1999 responses, Mr. Quarforth will be one of the directors of NetAccess. (NACI did not indicate that Mr. Quarforth would be the "new chairman of the board of NetAccess," as incorrectly stated in Mr. Walker's discovery request.) Mr. Walker apparently also implies in paragraph 3 of his discovery request that NACI did not provide biographical information for any of the other directors of CFW. However, NACI's July 27, 1999 response to Question 5 states that the biographical

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information for all of the other current directors of CFW who will also be serving as directors of NetAccess is included at page 8 of CFW's 10-K (attached to NACI's responses at Exhibit 1).

Moreover, Mr. Walker asserts that the only information filed by NACI at the Authority's request on Tuesday, July 28, 1999 was the exhibits to its data request responses. Mr. Walker neglects to mention that NACI responded to each and every one of Staff's July 28, 1999 requests for information in the body of its July 28, 1999 responses, to which the exhibits were attached. As indicated above, upon receipt and review of the additional information provided by NACI on July 28, 1999, Staff has indicated (during a teleconference with Billye Sanders and Mr. Walker on Friday, July 30, 1999) that it does not need any further information to proceed to the hearing.

Finally, Mr. Walker asserts in his July 30, 1999 data request that applicants involved in a transfer of stock typically would be required to file a copy of an executed stock purchase agreement. NACI respectfully submits that this assertion is incorrect, and would like to take this opportunity to clarify its understanding of the Authority's application of Tennessee law with respect to corporate transactions such as CFW's purchase of the stock of NACI's unregulated parent company, NetAccess, Inc.

First, pursuant to Tennessee Code Annotated (T.C.A.) § 65-4-112, if CFW were to acquire all of the stock in NACI's parent company, NetAccess, Inc. *after* NACI already had its certificate, the transaction would not require Authority approval, because CFW is not itself a Tennessee public utility. Pursuant to TCA § 65-4-112, Authority approval of a lease, merger, or consolidation of property, rights and franchises among public utilities is only required if *both of the entities hold Tennessee certificates*.¹ In addition, the transaction also would not require approval pursuant to T.C.A. § 65-4-112 because it does not involve any "lease of [the] property, rights, or franchises" *of a public utility*, nor does it involve the "*merger or consolidation of [the] property, rights and franchises by any such public utility with the property, rights and franchises of any other such public utility of like character.*" (Emphasis added.) The "property" being transferred in this case is the stock owned by individual shareholders of NetAccess, not the property of NetAccess.

¹ In an October 29, 1997 letter to Jean Kiddoo and Kathy Cooper of Swidler Berlin Shereff Friedman, LLP (in connection with the MCI/WorldCom transaction), David Waddell explained Staff's application of the relevant statutory provisions as follows: "Under Tennessee Code Annotated (TCA) 65-4-112 and TCA 65-4-113, the Authority must approve any lease, merger, or consolidation of property, rights or franchises among public utilities, as well as any transfer of a certificate granted by this Authority (or its predecessor, the Tennessee Public Service Commission). Any entity certificated by this Authority or its predecessor is a public utility under TCA 65-4-101. Therefore, *if both of the merging entities hold certificates* (themselves or through any subsidiary) from this Authority or its predecessor at the time of the merger, approval of the consolidation is required. Also, if this transaction involves the transfer of any Tennessee certificate, the transfer of authority must be approved." (Emphasis added).

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Similarly, T.C.A. § 65-4-113 does not apply to the CFW transaction, as that section governs the transfer of authority (*i.e.*, transfer of a certificate) to provide utility services, and NACI is not requesting to transfer authority to CFW. Instead, NACI is requesting that a Certificate of Convenience and Necessity to provide telecommunications service in Tennessee be issued in NACI's name, and NACI will remain the operating entity. OFFICE EXECUTIVE

In short, the statutory requirements in T.C.A. §§ 65-4-112 and 65-4-113 do not apply to the CFW transaction because (1) CFW does not hold a Tennessee certificate; (2) the transaction does not involve a merger or transfer of a Tennessee public utility's property (the stock being sold in this transaction belongs to the individual shareholders, not to NetAccess, Inc.), and (3) the transaction does not involve a transfer of authority.

NACI is not aware of any basis for Mr. Walker's assertion in his July 30, 1999 discovery request that applicants in similar stock transaction proceedings would be required to file a copy of the executed stock purchase agreement. Moreover, even applicants that have requested authority to transfer certificate authority pursuant to T.C.A. § 65-4-113 have not been required to provide (and consequently have not provided) copies of their purchase agreements in connection with such applications to transfer authority.² NACI believes that Mr. Walker's attempt to initiate his own discovery process two days before NACI's postponed hearing is improper, highly suspect, and is in violation of the terms of the limited intervention that the Authority granted to his client, P.V. Tel.

Given that Mr. Walker has violated the terms of the limited grant of intervention, and in light of the additional time and expense that Mr. Walker's improper discovery request has caused, and the suspect motivation behind the filing, NACI respectfully requests that the Authority reconsider allowing P.V. Tel to participate in any further proceedings in this matter, in the interests of justice and to ensure the orderly and prompt conduct of the proceedings.

As noted above, Staff indicated during Joe Werner's conversation with Billye Sanders and Mr. Walker on Friday, July 30, 1999 that it has received from NACI all of the information that it needs to proceed to the hearing.

² See, e.g., Joint Application of Communication Network Services, L.L.C. and Rocky Mountain Broadband, Inc., Docket No. 99-00327 (granted from the bench on May 18, 1999); Joint Application of STAR Telecommunications, Inc. and PT-1 Communications, Inc., Docket 98-00416 (granted effective January 29, 1999).

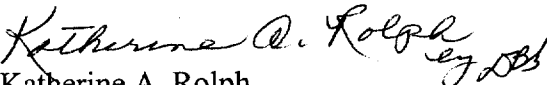
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Please do not hesitate to call me (at 202/424-7788) or Billye Sanders (at 615/252-2451) if you have any questions or need any additional information.

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Sincerely,


Katherine A. Rolph

Counsel to NA Communications, Inc.

cc: Joe Werner
Paul Green
Henry Walker, Esq.
D. Billye Sanders, Esq.
Cathy Davis